

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES SMALL BUSINESS
ADMINISTRATION,

Plaintiff,

v.

ALISTAIR ANDERSON DONALD, et al.,

Defendants.

Case No. 10-cv-04425-JSW (JCS)

**ORDER FOR ADDITIONAL BRIEFING
RE MOTIONS FOR DEFAULT
JUDGMENT**

Re: Docket Nos. 187-189, 191-197

At the December 5, 2014 hearing on Plaintiff's pending default judgment motions, the Court requested additional briefing addressing the question of whether the amounts of the judgments sought against the Class B limited partners should be adjusted in light of the judgment that has already been entered against the Class A partners. In particular, the Court expressed concern that awarding the same unfunded capital contributions against both the Class A partners and the Class B partners might amount to a double recovery to the extent that the Partnership Agreement required the Class B partners to make capital contributions *only* where the Class A partners had defaulted on their obligations under the agreement. In response, the Receiver cites its authority to demand directly from the Class B partners unfunded amounts, "independently of any of the Class A partners." However, Plaintiff has not cited specific provisions of the Partnership Agreement, or any legal authority, that address whether judgment may be entered against the Class B partners for amounts that have already been awarded against the Class A partners in a separate judgment. Further, Plaintiff's brief suggests that close to \$6 million of the unfunded capital contribution has, in fact, been paid to Plaintiff already. Plaintiff specifically references a settlement payment of \$1,531,199.51 (the source of this payment is not specified) and amounts

1 collected from other Class B partners in the amount of \$4,276,906. These payments also raise the
2 possibility of double recovery.

3 In light of these concerns, the Court requests that Plaintiff provide: 1) a sworn declaration
4 reflecting the specific amounts of any payments of the unfunded capital contributions that have
5 already been made or are expected to be made in the future; and 2) a supplemental brief
6 addressing the issues discussed above; specifically, Plaintiff shall address why the judgments
7 sought against the defaulting Class B partners do not amount to a double recovery in light of a) the
8 judgment already entered against the Class A partners; and b) the payments of unfunded capital
9 that have already been made by other defendants. Plaintiff shall cite to the relevant provisions of
10 the Partnership Agreement and applicable case law in support of its position.

11 Plaintiff's supplemental materials shall be filed no later than **Friday, January 16, 2015.**

12 **IT IS SO ORDERED.**

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14 Dated: December 30, 2014

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17 JOSEPH C. SPERO
United States Magistrate Judge
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